



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION**

WILLIE FRAZIER,	§	
Petitioner,	§	
	§	
vs.	§	CIVIL ACTION NO. 4:21-1674-MGL-TER
	§	
WARDEN BURT,	§	
Respondent..	§	

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**ORDER ADOPTING THE REPORT AND RECOMMENDATION,  
DISMISSING THE CASE WITHOUT PREJUDICE  
AND WITHOUT REQUIRING RESPONDENT TO FILE A RETURN,  
AND DENYING PETITIONER'S THREE MOTIONS**

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Petitioner Willie Frazier (Frazier) filed this habeas petition pursuant to 28 U.S.C. § 2254 against Respondent Warden Burt (Burt). Frazier is representing himself.

The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting to the Court this case be dismissed without prejudice as successive and unauthorized., and without requiring Burt to file a return. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may

accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on August 18, 2021; and the Clerk of Court entered Frazier's three motion under Fed. R. Civ. P. 60(b)(4) on August 23, August 26, and August 30, 2021.

As per Rule 60(b)(4), "[o]n motion and just terms, the [C]ourt may relieve a party or its legal representative from a final judgment, order, or proceeding [if] . . . the judgment is void[.]" *Id.* But, this rule applies to a federal judgment, not a state judgment, which is what Frazier is attacking here. Therefore, the Court will deny these three motions.

Moreover, liberally construing these motions as objections to the Report, the Court will overrule them inasmuch as this petition is successive and unauthorized. Frazier fails to argue otherwise.

After a thorough review of the Report and the record in this case pursuant to the standards set forth above, the Court overrules Frazier's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of this Court this case is **DISMISSED WITHOUT PREJUDICE** as successive and unauthorized., and without requiring Burt to file a return.

Further, Frazier's three motions under Rule 60(b)(4) are **DENIED**.

To the extent Frazier requests a certificate of appealability, that request is **DENIED**.

**IT IS SO ORDERED.**

Signed this 29th day of November, 2021, in Columbia, South Carolina.

/s/ Mary Geiger Lewis  
MARY GEIGER LEWIS  
UNITED STATES DISTRICT JUDGE

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**NOTICE OF RIGHT TO APPEAL**

Frazier is hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to the Federal Rules of Appellate Procedure.